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OFFICE OF PETITIONS

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In re Patent No. 7,759,082 : DECISION ON REQUEST
Bowlin, et al. : FOR
Issue Date: July 20, 2010 : RECONSIDERATION OF
Application No. 10/764,691 : PATENT TERM ADJUSTMENT
Filed: January 26, 2004 : and
Atty Docket No. OGA-007.03 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 20, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by either four hundred and forty (440) or four hundred and fifty-four (454) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by four hundred and thirty-eight (438) days is **GRANTED to the extent indicated herein.**

Patentees dispute the reductions of 43 days to the patent term adjustment pursuant to 37 CFR 1.704(c)(10) for the filing of an amendment under 37 CFR 1.132 on June 8, 2010. Patentees' assert the reduction to the patent term adjustment under 37 CFR 1.704(c)(10) should be 14 days. Patentees' argument has been considered, and is persuasive to the extent indicated below.

It is noted that 37 CFR 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

In this instance, the record reveals that the Office took action in response to the filing of amendment under § 1.312 on June 17, 2010. Accordingly, the period of adjustment of the term of the patent should be reduced by 15 days, beginning on the date the amendment under 37 CFR 1.312 was filed, June 8, 2010 and ending on the mailing date of the response to the amendment under 37 CFR 1.312, June 17, 2010. Accordingly, the period of reduction of 43 days will be removed and a period of reduction of 15 days will be entered¹.

Accordingly, the patent term adjustment is 438 days (459 days of A delay + 430 days of B delay - 0 days of overlap - 451 days of applicant delay²).

¹ It is noted that patentees assert that only 14 days of reduction to the patent term adjustment should be entered for the filing of the amendment under 37 CFR 1.312, however, the period of reduction to the patent term adjustment under 37 CFR 1.704(c)(10) begins on, and includes, the date the amendment under 37 CFR 1.312 was filed and ends on, and includes, the mailing date of the response to the amendment under 37 CFR 1.312. "When a period is indicated (in 37 CFR 1.703 or 1.704) as 'beginning' on a particular day, that day is included in the period, in that such day is 'day one' of the period and not 'day zero.'" MPEP 2731. "For example, a period beginning on April 1 and ending on April 10 is ten (and not nine) days in length." *Id.* Thus, in this instance, the period of reduction to the patent term adjustment is 15 days.

² Patentees' argument that no reduction to the patent term adjustment should be entered for the filing of the amendment under 37 CFR 1.312 because the amendment was filed to correct a data entry error made by the Office is not persuasive. The priority information for the application has been of record since 2004, giving patentees' ample opportunity to make any corrections to the record without the need for filing an amendment under 37 CFR 1.312. With very few exceptions, 37 CFR 1.704(c)(10) does not distinguish between papers filed in the ordinary course and papers filed to correct a purported error by the Office. An amendment under 37 CFR 1.312 does not fall within one of these exceptions. The record demonstrates that patentees' filed a paper after the mailing of the Notice of Allowance that may have caused substantial

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred and thirty-eight (438) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

interference and delay in the patent issue process. It was, therefore, appropriate to reduce the patent term adjustment under 37 CFR 1.704(c)(10).

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,759,082 B2

DATED : Jul. 20, 2010

INVENTOR(S) : Bowlin et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (410) days

Delete the phrase "by 410 days" and insert -- by 438 days--